

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TIMOTHY CALDWELL,)
)
)
Movant,)
)
)
v.)
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on movant's motion to vacate, set aside or correct sentence. The motion is "second or successive" within the meaning of 28 U.S.C. §§ 2244 & 2255, but it has not been certified by the United States Court of Appeals for the Eighth Circuit as required by the AEDPA. As a result, it will be dismissed.

On August 16, 2001, a federal grand jury returned a single count Indictment, charging movant, a previously convicted felon, with unlawfully possessing a firearm that had traveled in interstate commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e), the Armed Career Criminal Act. Following a jury trial on June 27, 2002, movant was found guilty of being a previously convicted felon in possession of a firearm. After concluding movant was an armed career criminal, by virtue of three prior burglary convictions, the Court sentenced movant to 240 months' imprisonment, followed by five years supervised release. United States v. Caldwell,

4:01CR350 JCH (E.D. Mo.). On August 6, 2003, movant's conviction and sentence were affirmed on appeal. United State v. Caldwell, 339 F.3d 680 (8th Cir. 2003).

Movant filed his first § 2255 motion on September 1, 2004. Caldwell v. United States, 4:04CV1183 JCH (E.D. Mo). This Court denied the motion and dismissed movant's claims with prejudice. Movant did not appeal. Movant filed a second motion to vacate on April 27, 2012. Caldwell v. United States, 4:12CV771 JCH (E.D. Mo.). The Court dismissed movant's motion as successive, and again, movant failed to file an appeal. Movant filed his third motion to vacate on September 6, 2012, Caldwell v. United States, 4:12CV1621 JCH (E.D. Mo.), which was also dismissed as successive.

Absent certification from the United States Court of Appeals, this Court lacks authority under § 2255 to grant movant's requested relief. As a result, the instant motion to vacate will be dismissed.

Accordingly,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255, is **DENIED**.

IT IS FURTHER ORDERED that the Court will not grant movant a certificate of appealability.

An Order of Dismissal will be filed with this Memorandum and Order.

Dated this 12th day of December, 2012.

/s/Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE